**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 1541 of 1984**
**With**
**FIRST APPEAL No. 1542 of 1984**
**With**
**FIRST APPEAL No. 1543 of 1984**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE KS JHAVERI**

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**BECHARBHAI NANJIBHAI PRAJAPATI - Appellant(s)**
**Versus**
**SHIYA MANAGERSINH RAMANARAYAN SINH RAJPUT & 5 - Defendant(s)**

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**Appearance :**
MR KH BAXI for Appellant(s) : 1,
FRESH NOTICE REQD(N) for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2, 4.2.1, 4.2.2,4.2.3
SERVED BY RPAD - (N) for Defendant(s) : 3,
None for Defendant(s) : 4,
MR SV RAJU for Defendant(s) : 5,
MR NAGIN N GANDHI for Defendant(s) : 6,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 08/08/2006**

**ORAL JUDGMENT**

1. By way of these appeals the appellants have challenged the judgement and award dated 28.12.1983 passed by M.A.C.T. Sabarkantha, in various claim petitions whereby the said petitions were partly allowed.

2. The brief facts of the case are that the on 17.10.1980 at about 4.15 p.m. near village Alampur on

Dhansura Modasa Road the appellants were travelling in the tractor attached with the trolley bearing Registration No. G.R.G. 8501 coming from Dhansura side violently dashed from behind with the result they were thrown on the road. Therefore they were claimed various claims in various petitions.

3. Learned advocate for the appellant submitted that the judgement and award passed by the tribunal are passed on inferences not warranted from the facts of the case and on presumptions not permitted by law. He further submitted that the judgement and award passed by the tribunal are based on mere surmises and conjectures by the tribunal.

4. Heard. I have gone through the judgement and award of the Tribunal while passing the judgement tribunal observed in para 7 that:

> “The accident would not have happened at all if the tanker would not have dashed against the trolley attached to the tractor from behind. It was admittedly broad day light when the accident took place, it was expected of the driver of the tanker to move with utmost care when the tractor was going ahead of him. The tanker was found in front of the tractor at a distance of about 30 feet after the impact. It is, therefore,

> presumed that the driver in his attempt to overtake the tractor proceeding a head of him had dashed against the trolley attached to the tractor."

Further tribunal has observed that the evidence brought on record clearly establishes the negligence on the part of the driver in causing the mishap. Therefore the driver original opponent No. 1 is guilty of negligence and but for his negligence the accident could not have happened at all.

5. Learned Counsel for the appellants is not able to point out anything contrary to takes a different view of the matter. I am in complete agreement with the reasoning adopted and the findings arrived at by the trial court. No case is made out to cause interference. Hence these appeals are dismissed. No order as to costs.

***(K.S.JHAVERI, J.)***

Suresh*